

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	§	CHAPTER 7
	§	
AMERICAN UNDERWRITING	§	Case No. 18-58406-SMS
SERVICES, LLC,	§	
	§	
<u>Debtor.</u>	§	

NOTICE OF HEARING

PLEASE TAKE NOTICE that S. Gregory Hays, Chapter 7 Trustee for the bankruptcy estate of American Underwriting Services, LLC, Debtor in the above captioned case, has filed a *Motion for Authority to Pay Insurance Premiums and to Return Funds Erroneously Paid to the Trustee* (the "**Motion**"). The Motion is on file with the Clerk of the Court at the address set forth below and is available for review between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users) or a copy may be obtained from counsel for the Trustee identified below.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing (the "**Hearing**") to consider the Motion at **10:30 a.m. on December 5, 2018**, in Courtroom 1201, Richard B. Russell Federal Building, 75 Ted Turner Drive, S.W. Atlanta, Georgia 30303.

Your rights may be affected by the Court's ruling on the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views, then you and/or your attorney should attend the Hearing. You may also file a written response to the Motion with the Clerk at the address stated below, but you are not required to do so. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive Street, SW, Atlanta, Georgia 30303. If you file a response, you should also mail a copy of your response to the undersigned at the address stated below.

Dated: November 2, 2018.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

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2964 Peachtree Road NW, Suite 555

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COUNSEL FOR THE CHAPTER 7 TRUSTEE

**IN THE UNITED STATES BANKRUPTCY COURT
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ATLANTA DIVISION**

IN RE:	§	CHAPTER 7
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AMERICAN UNDERWRITING SERVICES, LLC,	§	Case No. 18-58406-SMS
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**MOTION FOR AUTHORITY TO PAY INSURANCE PREMIUMS AND TO RETURN
FUNDS ERRONEOUSLY PAID TO THE TRUSTEE**

COMES NOW, S. Gregory Hays, Chapter 7 Trustee (the “**Trustee**”) for the bankruptcy estate (the “**Estate**”) of American Underwriting Services, LLC, Debtor (the “**Debtor**”) in the above captioned case (the “**Case**”), by and through counsel, and hereby files this *Motion for Authority to Pay Insurance Premiums and to Return Funds Erroneously Paid to the Trustee* (the “**Motion**”). In support of the Motion, the Trustee shows the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157. Venue of this proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are Section 105 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

3. On May 18, 2018 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Georgia (the “**Court**”). On June 27, 2018, the United States Trustee filed a

notice of appointment of Chapter 11 Trustee pursuant to which S. Gregory Hays was appointed as the Chapter 11 Trustee for the bankruptcy estate of the Debtor.

4. On August 1, 2018, the Court converted the Case to a proceeding under Chapter 7 effective July 27, 2018 [Doc. No. 106] and directed the United States Trustee to appoint a trustee in the Chapter 7 Case.

5. On August 13, 2018, the United States Trustee filed a Notice of Appointment of Interim Trustee and Section 341(a) Meeting of Creditors [Doc. No. 108] in which S. Gregory Hays was appointed as interim trustee in the Chapter 7 Case. The Trustee remains the duly acting Chapter 7 Trustee for the bankruptcy estate of the Debtor.

INSURANCE PREMIUMS AND RELATED TAXES AND EXPENSES

6. Prior to the Petition Date and during the Chapter 11 Case, the Debtor provided liability insurance products—as a program underwriter based in Atlanta, Georgia—for the trucking and transportation industry, including with regard to commercial auto liability, motor truck cargo, auto physical damage, property, and general liability products. In the ordinary course of the operations of the Debtor, the Debtor would identify appropriate insurance coverage, collect insurance premiums, and—after retaining commissions—remit the balance of the insurance premiums to the identified insurance carriers.

7. Although the operations of the Debtor have been terminated, the Court entered an Order on September 27, 2018, authorizing the Trustee to perform certain business activities to assist in the administration of the Estate [Doc. No. 145].

8. In the course of the administration of the Estate first by the Debtor and then by the Trustee, the Bankruptcy Estate has collected certain insurance premiums (the “**Insurance Premiums**”) that—after retaining applicable commissions—the Debtor, acting as a Debtor-in-

Possession, had agreed would otherwise be remitted to certain insurance carriers in the ordinary course of operations of the Debtor.

9. Attached as **Exhibit A** and incorporated herein by reference is a summary of the Insurance Premiums collected by the Trustee along with the proposed disposition of the Insurance Premiums to insurance carriers, less the applicable commission due to the Debtor's Bankruptcy Estate.

RETURN OF FUNDS ERRONEOUSLY PAID TO THE TRUSTEE

10. On or about July 12, 2018, the Trustee received payments totaling \$46,369.90 from US Premium Finance. This amount is included within the summary attached as Exhibit "A". US Premium Finance has advised the Trustee that these funds were paid in error to the Debtor. In particular, the money was supposed to have been delivered to a different general agent with no affiliation to AUS. The Trustee is advised and informed that the correct general agent is CTC Transportation Insurance Services, LLC. The Trustee is further advised and informed that the general agent was inputted incorrectly by US Premium Finance prior to the disbursement. This resulted in the proceeds being paid to AUS in error.

11. The Trustee has no basis to dispute US Premium Finance's claim that these funds were erroneously paid to the Debtor and that the Debtor had no right or claim to these funds. The Trustee therefore agrees that these funds were mistakenly paid to the Debtor and that they should be returned to US Premium Finance. However, because the funds were paid into the Debtor's bank account, the Trustee requests permission to return the funds with notice to creditors.

REQUESTED RELIEF

12. By this Motion, the Trustee requests an order—substantially in the form as the proposed order attached as **Exhibit B** hereto—authorizing the Trustee to retain applicable commissions for the benefit of the Estate and turnover and otherwise disburse the balance of the Insurance Premiums as provided on **Exhibit A** attached hereto.

BASIS FOR RELIEF

13. Section 105(a) of the Bankruptcy Code allows the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” *See* 11 U.S.C. § 105(a).

14. The Trustee submits that the relief requested in this Motion is consistent with the relief typically granted in orders confirming that a trustee may transfer property in the ordinary course of business of the Debtor. In this matter, the Debtor agreed to remit insurance premiums to insurance carriers and such procedure is an ordinary business procedure of the Debtor. The Trustee is informed and advised that the Debtor had agree to remit these premiums as a condition of remaining in business while it explored reorganization or sale opportunities. Under the circumstances, the Trustee has determined—in an exercise of the sound business judgment of the Trustee—that honoring the ordinary procedures and business commitments of the Debtor and—after retaining applicable commissions—disbursing the balance of the Insurance Premiums as set forth on **Exhibit A** in an efficient manner is in the best interests of the Estate and those insured pursuant to the Insurance Premiums.

15. For these reasons, the Trustee requests that the Court: a) authorize the Trustee to retain applicable commissions; and b) allow the Trustee to disburse the balance of the Insurance Premiums as set forth on **Exhibit A**.

RESERVATION OF RIGHTS

16. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Estate; (b) a waiver of any rights of the Trustee to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection by the Trustee of any position with regard to the Insurance Premiums other than as specifically set forth herein; or (e) otherwise affecting the rights of the Estate.

WHEREFORE, Trustee requests that this Court enter an Order, substantially in the form of the proposed order attached as **Exhibit B** hereto, that grants: (1) this Motion; and (2) the Trustee such other and further relief as is just and proper.

Dated: November 2, 2018

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.
Georgia Bar No. 636265
Buckhead Centre
2964 Peachtree Road NW, Suite 555
Atlanta, GA 30305
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COUNSEL FOR THE CHAPTER 7 TRUSTEE

EXHIBIT A

American Underwriting Services LLC

Premium Payments Received 6/25/18 through 9/20/18

Premium Payments Received	\$ 471,056.28
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American Underwriting Services, LLC (Commission)	\$32,027.28
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Proposed Payments

American Inter-Fidelity Exchange	\$75,178.37
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AIG	\$55,442.98
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American Millennium Insurance Company	\$58,091.52
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Tyser & Co.	\$111,196.01
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Britt-Tyser	\$39,669.11
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ACE Westchester Specialty Grp	\$1,203.62
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American Southern Insurance Companies	\$51,727.49
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US Premium Finance	\$46,369.90
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Capital Insurance Brokers	\$150.00
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	\$439,029.00

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<u>Debtor.</u>	§	

CERTIFICATE OF SERVICE

This is to certify that service of the foregoing *Motion for Authority to Pay Insurance Premiums and to Return Funds Erroneously Paid to the Trustee* was served via the United States Bankruptcy Court for the Northern District of Georgia's Electronic Case Filing System to all registered parties who have filed appearances and requested notices in this case and as indicated in Exhibit "A" which is attached hereto.

Dated: November 2, 2018

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Buckhead Centre

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COUNSEL FOR THE CHAPTER 7 TRUSTEE

Exhibit A

J. Ronald Jones, Esq. Nexsen Pruet LLC 205 King Street, Suite 400 Charleston, SC 29401 <i>Via Regular Mail</i>	Gus H. Small, Esq. Anna M. Humnicky, Esq. Benjamin S. Klehr, Esq. Small Herrin, LLP Two Paces West, Suite 200 2727 Paces Ferry Road Atlanta, GA 30339 <i>Via ECF</i>
ProSight Specialty Mgt. Co., and New York Marine and General Insurance Company c/o Gary Marsh, Denton US, LLP 303 Peachtree Street, NE, Suite 5300 Atlanta, GA 30308 <i>Via ECF</i>	Lloyds of London/Tysers 9th Floor Beaufort House 15 St Botolph Street London, England, EC3A 7EE <i>Via Regular Mail</i>
American Millennium Insurance Company 1044 Route 23 North, STE 103 Wayne, NJ 07470 <i>Via Regular Mail</i>	SC&F Specialty Underwriters 160 Water Street 16th Floor New York, NY 10038-4922 <i>Via Regular Mail</i>
AIG 1200 Abernathy Rd Bldg 600, Suite 800 Atlanta, GA 30328 <i>Via Regular Mail</i>	American Inter-Fidelity Exchange 9223 Broadway; Ste A Merrillville, IN 46410 <i>Via Regular Mail</i>

Lindsay P.S. Kolba, Esq. Office of U.S. Trustee 362 Richard Russell Bldg. 75 Ted Turner Drive, SW Atlanta, GA 30303 <i>Via Email and ECF</i>	Jay W. Hurst Assistant Attorney General Bankruptcy & Collections Division MC 008 P.O. Box 12548 Austin, Texas 78711-2548 <i>Via Regular Mail</i>
Georgia Insurance Department Attn: Sarah Crittenden, Esq. Suite 620, West Tower 2 Martin Luther King, Jr. Drive Atlanta, GA 30334 <i>Via Regular Mail</i>	D. Victor Reynolds, District Attorney Cobb Judicial Circuit Office of the District Attorney 70 Haynes Street Marietta, GA 30090 <i>Via Regular Mail</i>
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